

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

2:24-CR-14-Z-BR-(2)

ELTON L. SMITH (2),

Defendant.

ORDER

Before the Court is Plaintiff's Motion for Stay of Order Setting Conditions of Release ("Motion") (ECF No. 9). The Court **GRANTS** the Motion for the reasons explained below.

Defendant is charged with violating 21 U.S.C. Section 846, Conspiracy to Distribute and Possess with Intent to Distribute Methamphetamine, and 21 U.S.C. Sections 841(a)(1) and (b)(1)(C), Possession with Intent to Distribute Methamphetamine. ECF No. 9 at 1. On March 15, 2024, United States Magistrate Judge Nancy Joseph conducted a detention hearing in the Eastern District of Wisconsin and ordered Elton L. Smith released on conditions. *Id.* at 1–2. In her order, Judge Joseph granted a stay until March 18, 2024, at 5 p.m., so the Government could appeal that decision. It does so now.

18 U.S.C. Section 3145 provides:

Review of a Release Order – If a person is ordered released by a magistrate judge, or by a person other than a judge of a court having original jurisdiction over the offense and other than a federal appellate court—

- (1) The attorney for the Government may file, with the court having original jurisdiction over the offense, a motion for revocation of the order or amendment of the conditions of release; and . . .

The motion shall be determined promptly.

Although “[Section] 3145 does not expressly authorize a stay,” a stay of a release order is authorized and procedurally proper pending *de novo* review by a district judge. *United States v. Brigham*, 569 F.3d 220, 230 (5th Cir. 2009). “[G]iven that the issue being reviewed involves a person’s release from custody pending further legal proceedings, the absence of stay authority could render the district court’s review power illusory.” *Id.* If the Court disagrees with the magistrate judge’s release determination without a stay, “the person in question may have harmed the community or disappeared by the time the district court’s ruling is rendered and detention is ordered.” *Id.*

A stay is proper here because Defendant presents a danger to the community and a flight risk. *See* ECF No. 9 at 2–6. It is therefore **ORDERED** that the Order Setting Conditions of Release in this case is **STAYED** pending this Court’s decision on appeal. It is **FURTHER ORDERED** that Defendant shall remain in custody pending disposition of this appeal.

SO ORDERED.

March 18, 2024



MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE